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April 27, 2010

**VIA ECF**

The Honorable Eric N. Vitaliano  
United States District Judge  
United States District Court for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: Kanhoye v. Altana Inc., et al., 05-CV-4308 (ENV-WDW)

Dear Judge Vitaliano:

As Your Honor is aware, we represent Defendants in the above-referenced action. By Order dated April 16, 2010, Your Honor granted Defendants' request that the parties' schedule for the submission for pretrial submissions be amended to reflect the following:

- Parties shall serve their motions in limine, requests for charge and voir dire questions by April 26, 2010.
- Parties shall serve their opposition papers by May 3, 2010.
- Parties shall file their respective papers by May 3, 2010.

Yesterday, the undersigned reached out to plaintiff's counsel, Anthony Ofodile, to confirm, as previously agreed, that he planned to serve his pretrial submissions by email. In response to that inquiry, Mr. Ofodile responded "[y]es." A copy of the email correspondence between the undersigned and Mr. Ofodile is attached hereto at Tab A. In reliance on this representation, at approximately 6 p.m. yesterday, the undersigned forwarded Defendants' pretrial submissions to Mr. Ofodile by electronic mail. A copy of that email message is attached hereto at Tab B. In response, at 10:26 p.m., Mr. Ofodile forwarded by electronic mail Plaintiff's Request to Charge and Voire [sic] Dire only. In that same email message, despite his representation just hours earlier that Defendants could expect to receive all of Plaintiff's pretrial submissions on April 26 as ordered by this Court, Mr. Ofodile stated that "[b]ecause of a trial that was supposed to start today that [he] was preparing for, [his] motion is not ready and should *hopefully* get to [the undersigned] tomorrow." A



The Honorable Eric C. Vitaliano  
April 27, 2010  
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copy of Mr. Ofodile's message of late last night is attached hereto at Tab C. In response, the undersigned expressed great concern that Mr. Ofodile had unilaterally shortened Defendants' period to respond to Plaintiff's pretrial submissions and had granted Plaintiff the unfair advantage of being able to consider Defendants' pretrial motions well before serving Plaintiff's motion. A copy of the undersigned's email message to this effect is attached hereto at Tab D. Mr. Ofodile did not respond to the email attached at Tab D and Plaintiff still has not served Defendants with his pretrial motions.

Accordingly, we respectfully request that Plaintiff be deemed to have waived his right to serve and file pretrial motions based on his clear disregard for the Court's schedule and his seeming misrepresentation to the undersigned that he intended to serve his papers in accordance with the Court's deadline. In the alternative, we respectfully request that schedule for service and filing of Defendants' pretrial submissions be amended as follows:

- Defendants shall serve their opposition papers one week from the date that Plaintiff finally serves his pretrial motions.
- Defendants shall file their pretrial submissions one week from the date that Plaintiff finally serves his pretrial motions.
- Plaintiff shall file and serve his papers by May 3, 2010 as originally scheduled by the Court.

Thank you for Your Honor's courtesy in considering this request.

Respectfully submitted,

SEYFARTH SHAW LLP

s/ Christie Del Rey-Cone

Christie Del Rey-Cone

cc: Anthony C. Ofodile, Esq. (w/attachments via ECF)  
Gary Glaser, Esq. (w/ attachments)

**TAB A**

**Del Rey-Cone, Christie**

---

**From:** ACOdile@aol.com  
**Sent:** Monday, April 26, 2010 12:14 PM  
**To:** Del Rey-Cone, Christie  
**Subject:** Re: Kanho: Service of Pretrial Papers

Yes

In a message dated 4/26/2010 11:49:24 A.M. Eastern Daylight Time, CDelReyCone@seyfarth.com writes:

Hi Anthony. Just following-up on the voicemail message I just left you. When we had our April deadline for service of pretrial submissions, we agreed that we would serve our respective papers by email. I just wanted to confirm the same with you and that we should expect to receive your papers today by email.

Many thanks,  
Christie

Christie Del Rey-Cone  
Seyfarth Shaw LLP  
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Direct: 212.218.3321 □ Direct Fax: 917.344.1183  
cdelreyc@seyfarth.com □ www.seyfarth.com  
Assistant: Danette Pajooh □ 212.218.3367 □ dpajooh@seyfarth.com

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4/27/2010

**TAB B**

**Attachments:** CANON5D32D7\_EXCHANGE\_04262010-164502.PDF; CANON5D32D7\_EXCHANGE\_04262010-164641.PDF; CANON5D32D7\_EXCHANGE\_04262010-164704.PDF; CANON5D32D7\_EXCHANGE\_04262010-164731.PDF; CANON5D32D7\_EXCHANGE\_04262010-164854.PDF; CANON5D32D7\_EXCHANGE\_04262010-164932.PDF; CANON8A55B3\_EXCHANGE\_04262010-171012.PDF

**TAB C**

**Del Rey-Cone, Christie**

**From:** ACOdodile@aol.com  
**Sent:** Monday, April 26, 2010 10:26 PM  
**To:** Del Rey-Cone, Christie  
**Cc:** ACOdodile@aol.com  
**Subject:** Re: Kanhoye v. Altana, Inc., et al., U.S.D.C., E.D.N.Y., CV-05-4308 (ENV-WDW)  
**Attachments:** Kanhoye Randy Plaintiff's Proposed Voire Dire.pdf; Kanhoye Randy Plaintiff's Request to Charge.pdf

Enclosed please find Plaintiff's Request to Charge and Voire Dire. Because of a trial that was supposed to start today that I was preparing for, my motion is not ready and should hopefully get to you tomorrow.

In a message dated 4/26/2010 6:00:21 P.M. Eastern Daylight Time, CDelReyCone@seyfarth.com writes:

Anthony,

Attached please find the following documents:

- \* Notice of Motion of Defendants' Motions in Limine;
- \* Memorandum of Law in Support of Defendants' Motions in Limine;
- \* Notice of Motion of Defendants' Post-Summary Judgment Decision Motion for the Entry of a Rule 56(d) Order Setting Forth Stipulated Facts;
- \* Memorandum of Law in Support of Defendants' Post-Summary Judgment Decision Motion for the Entry of a Rule 56(d) Order Setting Forth Stipulated Facts;
- \* Declaration of Gary Glaser, Esq. in Support of Defendants' Post-Summary Judgment Decision Motion for the Entry of a Rule 56(d) Order Setting Forth Stipulated Facts with accompanying Exhibits A and B;
- \* Defendants' Proposed Jury Instructions; and
- \* Defendants' Proposed Voir Dire Questions.

Thank you,  
Christie

Christie Del Rey-Cone

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Assistant: Danette Pajoo □ 212.218.3367 □ dpajoo@seyfarth.com

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4/27/2010



**TAB D**

## Del Rey-Cone, Christie

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**From:** Del Rey-Cone, Christie  
**Sent:** Monday, April 26, 2010 10:32 PM  
**To:** 'ACOfodile@aol.com'  
**Cc:** Glaser, Gary  
**Subject:** Re: Kanhoye v. Altana, Inc., et al., U.S.D.C., E.D.N.Y., CV-05-4308 (ENV-WDW)

Anthony,

As you know, we must file on Monday and only have until then to respond. We are now in the position where you have our motions in hand and we do not have yours. This is not workable because you can prepare your motions with ours in mind (a benefit we did not have) and you are unilaterally shortening the time we have to prepare a response to your motion. If we do not have your motions first thing tomorrow, we will seek guidance from the court. When I touched base this morning and asked if you would be sending everything today, you said "yes.". We relied on that representation in sending our papers.

Thank you,  
Christie

Thank you,  
Christie

Christie Del Rey-Cone  
Seyfarth Shaw LLP  
620 Eighth Avenue  
New York, New York 10018  
Direct: 212.218.3321  
Fax: 917.344.1183  
cdelreycone@seyfarth.com

---

**From:** ACOfodile@aol.com  
**To:** Del Rey-Cone, Christie  
**Cc:** ACOfodile@aol.com  
**Sent:** Mon Apr 26 21:26:10 2010  
**Subject:** Re: Kanhoye v. Altana, Inc., et al., U.S.D.C., E.D.N.Y., CV-05-4308 (ENV-WDW)

Enclosed please find Plaintiff's Request to Charge and Voire Dire. Because of a trial that was supposed to start today that I was preparing for, my motion is not ready and should hopefully get to you tomorrow.

In a message dated 4/26/2010 6:00:21 P.M. Eastern Daylight Time, CDelReyCone@seyfarth.com writes:

Anthony,

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4/27/2010

Motion for the Entry of a Rule 56(d) Order Setting Forth Stipulated Facts with accompanying Exhibits A and B;

- \* Defendants' Proposed Jury Instructions; and
- \* Defendants' Proposed Voir Dire Questions.

Thank you,  
Christie

Christie Del Rey-Cone  
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